

FILED
APR 01 2010
BY PATRICK E. DUFFY, CLERK
DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

TED MATTHEW VOERDING,)	CV 09-73-H-DWM-RKS
)	
Petitioner,)	
v.)	ORDER
)	
MIKE MAHONEY, Warden, Montana)	
State Prison)	
)	
Respondent.)	
_____)	

Petitioner Voerding, a state prisoner proceeding pro se, brought this action pursuant to 28 U.S.C. § 2254. Magistrate Judge Strong entered Findings and Recommendation in this matter on February 22, 2010. Judge Strong recommended denying the petition on the merits. Petitioner timely objected to the Findings and Recommendation on March 2, 2010, and filed an amended objection

on March 4, 2010. He is therefore entitled to *de novo* review of the specified findings or recommendations to which he objects. 28 U.S.C. § 636(b)(1). The portions of the Findings and Recommendation not specifically objected to will be reviewed for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Despite Petitioner's objections, I agree with Judge Strong's analysis and conclusions. Because the parties are familiar with the factual and procedural background, it will not be restated here.

Petitioner objects that Judge Strong ignored evidence that the State did not issue the warrant until July 14, 2008, and accordingly the recommendation to deny the petition is in error. The objection is not well taken. The Findings and Recommendation take into account Petitioner's evidence. It notes the cover letter to the warrant dated July 14, 2008, remarks made in pretrial hearings, and an affidavit from Petitioner's counsel. See dkt. # 8 at 4. Judge Strong concludes, however, based on the face of the warrant itself, that the relevant warrant was issued January 11, 2007. I see no error in Judge Strong's finding. Issuance is legally distinct from serving or executing the warrant. Petitioner's reference to a dictionary's definition of the word "issue" does not change that fact.

I find no clear error in Judge Strong's remaining findings and recommendations.

Accordingly, IT IS HEREBY ORDERED that the Findings and Recommendation (dkt #8) are adopted in full.

IT IS FURTHER ORDERED that Petitioner Voerding's petition (dkt. ## 1, 2, 7) is DENIED on the merits. The Clerk of Court shall enter judgment in favor of Respondents and against Petitioner Voerding.

IT IS FURTHER ORDERED that a certificate of appealability is DENIED.

Dated this 6th day of April, 2010.



Donald W. Molloy, District Judge
United States District Court

